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HOUSE BILL 541

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Andy Nuñez

AN ACT

RELATING TO HIGHER EDUCATION; AMENDING THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT; PROVIDING FOR LICENSURE AND REGULATION OF NONREGIONALLY ACCREDITED COLLEGES AND UNIVERSITIES; EXEMPTING ORGANIZATIONS THAT OFFER BRIEF COURSES OF INSTRUCTION IN SPECIFIC SKILLS TRAINING; PROVIDING FOR ADMINISTRATIVE FEES; PRESCRIBING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 21-23-3 NMSA 1978 (being Laws 1971, Chapter 303, Section 3, as amended) is amended to read:

"21-23-3. DEFINITIONS. -- As used in the Post-Secondary Educational Institution Act:

A. [~~"board" or~~] "commission" means the commission on higher education;

B. "career school" means a private post-secondary

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1 educational institution offering a formal educational
2 curriculum in New Mexico for a fee to members of the general
3 public beyond compulsory school age, terminating in a
4 certificate, diploma, associate degree or comparable
5 confirmation of completion of the curriculum;

6 C. "college" or "university" means a private
7 post-secondary educational institution offering a formal
8 educational curriculum in New Mexico for a fee to members of
9 the general public beyond compulsory school age, terminating in
10 a baccalaureate, master's or doctoral degree or comparable
11 confirmation of completion of the curriculum;

12 D. "license" means a written [~~acknowledgement~~]
13 acknowledgment by the commission that a career school or
14 nonregionally accredited college or university has met the
15 requirements of the commission for offering a formal
16 educational curriculum within New Mexico;

17 E. "post-secondary educational institution"
18 includes an academic, vocational, technical, business,
19 professional or other school, college or university or other
20 organization or person offering or purporting to offer courses,
21 instruction, training or education from a physical site in New
22 Mexico, through distance education, correspondence or in person
23 [~~to any person within this state~~]; and

24 F. "registration" means a written [~~acknowledgement~~]
25 acknowledgment by the commission that a regionally accredited

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1 college or university has filed pertinent curriculum and
2 enrollment information as required by the commission. "

3 Section 2. Section 21-23-4 NMSA 1978 (being Laws 1971,
4 Chapter 303, Section 4, as amended) is amended to read:

5 "21-23-4. EXCEPTIONS. - -

6 A. The Post-Secondary Educational Institution Act
7 does not apply to or affect:

8 [~~A.—any~~] (1) a post-secondary educational
9 institution supported in whole or in part by state or local
10 taxation;

11 [~~B.—any~~] (2) an occupational, trade or
12 professional school operating pursuant to any New Mexico
13 occupational licensing law;

14 [~~C.—any~~] (3) a course of instruction provided
15 by an employer to its own employees for training purposes;

16 [~~D.—~~] (4) institutions that exclusively
17 [~~offering~~] offer education that is solely avocational or
18 recreational in nature;

19 [~~E.—any~~] (5) a course of instruction or study
20 sponsored by a recognized fraternal, trade, business or
21 professional organization or labor union for the instruction of
22 its members;

23 [~~F.—any~~] (6) a regionally accredited college
24 or university that is a private institution that provides an
25 academic education comparable to that provided by public

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1 colleges or universities;

2 [G-] (7) proprietary schools as defined in
3 Section 21-24-2 NMSA 1978;

4 [H-] (8) chartered, nonprofit religious
5 institutions whose sole purpose is to train students in
6 religious disciplines to prepare them to assume a vocational
7 objective relating primarily to religion;

8 [I-] (9) institutions that exclusively
9 [offering] offer instruction at any level from pre-school
10 through the twelfth grade; [and

11 J.—any] (10) an institution funded in full or in
12 part by an Indian tribe or pueblo in the state of New Mexico;
13 and

14 (11) an organization that provides only brief
15 courses of instruction designed to teach specific skills that
16 may be applicable in a work setting but are not sufficient in
17 themselves to be a program of training in employment.

18 B. An institution, school or program described in
19 this section shall not be entitled to an exemption unless it
20 presents satisfactory evidence to the commission that it
21 qualifies. "

22 Section 3. Section 21-23-5 NMSA 1978 (being Laws 1994,
23 Chapter 108, Section 6) is amended to read:

24 "21-23-5. DUTIES OF THE COMMISSION. --

25 A. The commission is charged with oversight of all

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1 private post-secondary educational institutions operating
2 within the state.

3 B. The ~~commission~~ shall provide for the
4 registration of all regionally accredited colleges and
5 universities operating in the state pursuant to the
6 Post-Secondary Educational Institution Act.

7 C. The ~~commission~~ shall provide for the licensure
8 of all career schools and all [~~non-accredited~~] nonregionally
9 accredited colleges and universities operating in the state
10 pursuant to the Post-Secondary Educational Institution Act. "

11 Section 4. Section 21-23-6 NMSA 1978 (being Laws 1994,
12 Chapter 108, Section 7) is amended to read:

13 "21-23-6. REGISTRATION OF COLLEGES AND UNIVERSITIES--
14 SUBMISSION OF MATERIALS. --

15 A. Every college or university operating in New
16 Mexico that is regionally accredited or seeking regional
17 accreditation by an accrediting agency approved by the
18 ~~commission~~ shall register with the ~~commission~~.

19 B. A college or university registering with the
20 ~~commission~~ pursuant to this section shall provide curriculum
21 and enrollment information, financial information and all
22 publication ~~materials~~ requested by the ~~commission~~. "

23 Section 5. Section 21-23-6.1 NMSA 1978 (being Laws 1994,
24 Chapter 108, Section 8) is amended to read:

25 "21-23-6.1. LICENSURE OF CAREER SCHOOLS--LICENSURE OF
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1 CERTAIN COLLEGES AND UNIVERSITIES. --

2 A. [~~Any~~] A career school or nonregionally
3 accredited college or university operating in New Mexico shall
4 be licensed by the commission. It is unlawful to operate a
5 career school or nonregionally accredited college or university
6 without first obtaining a license from the commission.

7 B. [~~Any~~] A college or university operating in New
8 Mexico that is not regionally accredited or seeking regional
9 accreditation by an accrediting agency approved by the
10 commission shall be licensed by the commission in the manner
11 provided for career schools or nonregionally accredited
12 colleges or universities. It is unlawful to operate a college
13 or university that is not accredited or seeking accreditation
14 by an accrediting agency approved by the commission without
15 first obtaining a license from the commission.

16 C. No person other than an employee of an
17 institution licensed pursuant to this section shall, for a
18 salary or fee, solicit attendance at that institution."

19 Section 6. Section 21-23-6.2 NMSA 1978 (being Laws 1994,
20 Chapter 108, Section 9) is amended to read:

21 "21-23-6.2. LICENSURE STANDARDS--REQUIREMENTS--FEE
22 AUTHORIZATION. --

23 A. Every career school and nonregionally accredited
24 college and university operating in the state shall annually
25 apply to the commission for licensure. The career school and

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1 nonregionally accredited college or university shall apply on
2 forms approved by the commission, shall supply all information
3 requested by the commission and shall pay an annual licensure
4 fee set by the commission.

5 B. The commission or its designee shall consider
6 information submitted by the career school and nonregionally
7 accredited college or university, information from independent
8 accreditation bodies and information gathered during visits to
9 the career school and nonregionally accredited college or
10 university in determining eligibility for licensure.

11 C. The commission shall promulgate and file, in
12 accordance with the State Rules Act, rules [~~and regulations~~]
13 that:

14 (1) require each career school and
15 nonregionally accredited college and university to supply
16 annually information regarding enrollment, program completion
17 by students, employment and other educational placements of
18 students and operating revenue budgets;

19 (2) provide standards and methods for the
20 evaluation and appraisal of career schools and nonregionally
21 accredited colleges and universities;

22 (3) provide for a tuition refund policy;

23 (4) require maintenance of adequate records by
24 each career school and nonregionally accredited college and
25 university and provide reasonable availability of records for

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1 inspection;

2 (5) regulate the use of deceptive and
3 misleading advertising and determine what information shall be
4 furnished each student prior to enrollment;

5 (6) assure that any career school or
6 nonregionally accredited college or university licensed
7 pursuant to the Post-Secondary Educational Institution Act has
8 entered into a teach-out agreement with at least one other
9 private or public institution operating in the state unless the
10 commission determines that such an agreement is not feasible;

11 (7) provide standards for the award of
12 associate, baccalaureate, master's and doctoral degrees;

13 (8) [~~encourage~~] require all [~~career~~] degree-
14 granting schools to seek appropriate external accreditation by
15 an agency recognized by the federal department of education as
16 a means of assuring quality instruction;

17 (9) name an advisory committee of education
18 providers and consumers, including owners and operators of
19 career schools and nonregionally accredited colleges and
20 universities;

21 (10) provide for the maintenance of records
22 for career schools and nonregionally accredited colleges and
23 universities no longer in operation;

24 (11) provide standards for the evaluation of
25 the financial stability and ability to meet the commitments of

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1 career schools and nonregionally accredited colleges and
2 universities;

3 (12) require each career school and
4 nonregionally accredited college and university to adopt a
5 procedure for the resolution of student complaints; and

6 (13) establish other requirements necessary to
7 carry out the provisions of the Post-Secondary Educational
8 Institution Act.

9 D. The commission may solicit information
10 pertaining to the financial history and stability of a career
11 school or nonregionally accredited college or university and
12 its owners, including information pertaining to actions of
13 bankruptcy filed within the immediately preceding five years.
14 The commission may consider such information in determining
15 eligibility for licensure. "

16 Section 7. Section 21-23-6.3 NMSA 1978 (being Laws 1994,
17 Chapter 108, Section 10) is amended to read:

18 "21-23-6.3. FEE AUTHORIZATION. --

19 A. The commission [~~is authorized to~~] may establish
20 initial application fees for all colleges, universities or
21 career schools seeking to operate in New Mexico. The initial
22 application fee shall be not less than two hundred dollars
23 (\$200) or more than five thousand dollars (\$5,000). In setting
24 the fee, the commission shall consider the projected revenue of
25 the institution and the projected cost of performing the

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1 review.

2 B. The commission [~~is authorized to~~] may establish
3 an annual licensing fee for all career schools or nonregionally
4 accredited colleges or universities licensed by the commission.
5 The licensing fee shall be proportionate to each school's gross
6 annual tuition revenue; provided the fee shall be not less than
7 two hundred dollars (\$200) or more than five thousand dollars
8 (\$5,000).

9 C. The commission may charge a reasonable
10 administrative fee not to exceed the actual cost of providing
11 the administrative service.

12 [~~C.~~] D. All fees imposed and collected by the
13 commission shall be deposited in the post-secondary educational
14 institution fund. "

15 Section 8. Section 21-23-10 NMSA 1978 (being Laws 1971,
16 Chapter 303, Section 9, as amended) is amended to read:

17 "21-23-10. DISCIPLINARY ACTIONS--CIVIL PENALTIES. --

18 [~~No~~] A. A person [~~firm or corporation may~~] shall
19 not:

20 [~~A.~~] (1) operate a career school or
21 nonregionally accredited college or university within the state
22 until that [~~career~~] school has been licensed by the commission;

23 [~~B.~~] (2) operate a regionally accredited
24 college or university within the state until that college or
25 university has registered with the commission;

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1 [~~C.~~] (3) deny enrollment to or make any
2 distinction or classification of pupils in the program or
3 practices of any post-secondary educational institution under
4 the jurisdiction of the commission on account of race, color,
5 culture, ancestry, national origin, sex, age, religion or
6 disability; or

7 [~~D.~~] (4) solicit, directly or through an agent
8 or employee, the enrollment of any person in a post-secondary
9 educational institution within the state by the use of fraud,
10 misrepresentation or collusion.

11 B. Whoever violates any provision of this section
12 may be assessed a civil penalty not to exceed five hundred
13 dollars (\$500) per day per violation. Civil penalties shall be
14 credited to the current school fund as provided in Article 12,
15 Section 4 of the constitution of New Mexico.

16 C. After an investigation, the commission may take
17 any one or a combination of the following disciplinary actions
18 against a post-secondary education institution licensed in
19 accordance with the Post-Secondary Educational Institution Act:

20 (1) revoke a license;

21 (2) assess a civil penalty as provided in
22 Subsection B of this section; or

23 (3) impose probation requirements."